A

New Securities Act

for

New Brunswick

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for

Law Reform Branch

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Province of New Brunswick

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INDEX

PART NUMBER	CONTENTS	PAGE
Definitions		1
Part I	Administration	16
Part II	Appeals	20
Part III	Investigations	22
Part IV	Audits	33
Part IVa	Stock Exchanges and Clearing Agencies	35
Part V	Registration	36
Part VI	Exemptions for Registration Requirements	45
Part VII	Trading in Securities Generally	52
Part VIII	Registration of Securities	69
Part IX	Distribution - Generally	83
Part X	Exemptions for Prospectus Requirements	89
Part XI	Proxy Solicitation	97
Part XII	Takeover Bid and Issuer Bids	99
Part XIII	Enforcement	101
Part XIV	Civil Liability	108
Part XV	General Provisions	139

Revised March 6, 1990

DRAFT SECURITIES ACT

FOR NEW BRUNSWICK

1.(1) INTERPRETATION

In this Act,

"adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities;

"associate", where used to indicate a relationship with any person or company, means,

(a) any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,

(b) any partner of that person or company,

(c) any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,

(d) any relative of that person,

(e) any person of the opposite sex to whom that person is married or with whom that person is living in a conjugal relationship outside marriage, or

(f) any relative of a person mentioned in subparagraph (e) who has the same home as that person;

"clearing agency" means a person or company that acts as an intermediary in paying funds or delivering securities, or both, in connection with trades in securities and that provides centralized facilities for the clearing of trades in securities;

"company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

"contract" includes a trust agreement, declaration of trust or other similar instrument;

"contractual plan" means any contract or other arrangement for the purchase of shares or units of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from such payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;

"dealer" means a person or company who trades in securities in the capacity of principal or agent;

"decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

"director", where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;

"distribution", where used in relation to trading in securities, means,

(a) a trade in securities of an issuer that have not been previously issued,

(b) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

(c) a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20 per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and "distribute", "distributed" and "distributing" have a corresponding meaning;

"distribution company" means a person or company distributing securities under a distribution contract;

"distribution contract" means a contract between a mutual fund or its trustees or other legal representative and a person or company under which that person or company is granted the right to purchase the shares or units of the mutual fund for distribution or to distribute the shares or units of the mutual fund on behalf of the mutual fund;

"individual" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his capacity as trustee, executor, administrator or other legal personal representative;

"insider" means,

(a) every director or senior officer of an issuer,

(b) every director or senior officer of a company that is itself an insider or subsidiary of an issuer,

(c) any person or company who beneficially owns, directly or indirectly, voting securities of an issuer or who exercises control or direction over voting securities of an issuer or a combination of both carrying more than 10 per cent of the voting rights attached to all voting securities of the issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, and

(d) an issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;

"issuer" means a person or company who has outstanding, issues or proposes to issue, a security;

"management company" means a person or company who provides investment advice, under a management contract;

"management contract" means a contract under which a mutual fund is provided with investment advice, alone or together with administrative or management services, for valuable consideration;

"material change", where used in relation to the affairs of an issuer, means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made

by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

"material fact", where used in relation to securities issued or proposed to be issued, means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities;

"Minister" means the Minister of Justice or such other member of the Executive Council to whom the administration of this Act may be assigned;

"misrepresentation" means,

(a) an untrue statement of material fact, or

(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made;

"mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

"officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;

"person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

"portfolio manager" means an adviser registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients;

"portfolio securities", where used in relation to a mutual fund, means securities held or proposed to be purchased by the mutual fund;

"private mutual fund" means a mutual fund that is,

(a) operated as an investment club, where,

(i) its shares or units are held by not more than fifty persons and its indebtedness has never been offered to the public;

(ii) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees; and

(iii) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations, or

(b) administered by a trust company registered under the Loan and Trust Companies Act and consists of a common trust fund as provided for in section 52 of that Act;

"promoter" means,

(a) a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or

(b) a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely

in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business;

"proxy" means a completed and executed form of proxy by means of which a security holder has appointed a person or company as his nominee to attend and act for him and on his behalf at a meeting of security holders;

"registrant" means a person or company registered or required to be registered under this Act;

"regulations" means the regulations made under this Act;

"salesperson" means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of the dealer;

"security" includes,

(a) any document, instrument or writing commonly known as a security,

(b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,

(c) any document constituting evidence of an interest in an association of legatees or heirs,

(d) any document constituting evidence of an option, subscription or other interest in or to a security,

(e) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than a contract of insurance issued by an insurance company licensed under the Insurance Act and an evidence of deposit issued by a bank to which the Bank Act (Canada) applies or by a loan corporation or trust company registered under the Loan and Trust Companies Act,

(f) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company licensed under the Insurance Act which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity,

(g) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,

(h) any certificate of share or interest in a trust, estate or association,

(i) any profit-sharing agreement or certificate,

(j) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,

(k) any oil or natural gas royalties or leases or fractional or other interest therein,

(l) any collateral trust certificate,

(m) any investment contract,

(n) any document constituting evidence of an interest in a scholarship or educational plan or trust, and

whether any of the foregoing relate to an issuer or proposed issuer;

"senior officer" means,

(a) the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and

(b) each of the five highest paid employees of an issuer, including any individual referred to in clause (a);

"Superintendent" means the Superintendent of Securities appointed under subsection 2(2) and includes a deputy superintendent appointed under that section to carry out the duties and exercise the powers of the Superintendent under this Act;

"trade" or "trading" includes,

(a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (c), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt,

(b) any receipt by a registrant of an order to buy or sell a security,

(c) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subparagraph (c) of the definition of "distribution" for the purpose of giving collateral for a bona fide debt, and

(d) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

"underwriter" means a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution and includes a person or company who has a direct or indirect participation in any such distribution, but does not include,

(a) a person or company whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer,

(b) a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,

(c) a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or

(d) a bank to which the Bank Act (Canada) applies with respect to the securities described in paragraph (a) of subsection 21(2) and to such banking transactions as are designated by the regulations;

"voting security" means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

1.(2) Affiliated companies.

A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.

1.(3) Controlled companies.

A company shall be deemed to be controlled by another person or company or by two or more companies if,

(a) voting securities of the firstmentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and

(b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first mentioned company.

1.(4) Subsidiary companies.

A company shall be deemed to be a subsidiary of another company if,

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more companies each of which is controlled by that other, or

(iii) two or more companies each of which is controlled by that other; or

(b) it is a subsidiary of a company that is that other's subsidiary.

1.(5) Beneficial ownership of securities.

A person shall be deemed to own beneficially securities beneficially owned by a company controlled by him or by an affiliate of such company.

1.(6) Idem.

A company shall be deemed to own beneficially securities beneficially owned by its affiliates.

1.(7) Insider of mutual fund.

Every management company and every distribution company of a mutual fund and every insider of such management company or distribution company shall be deemed to be an insider of the mutual fund.

1.(8) Issuer as insider of another issuer.

Where an issuer becomes an insider of a another issuer, every director or senior officer of the issuer shall be deemed to have been an insider of the other issuer for the previous six months or for such shorter period that he was a director or senior officer of the issuer.

PART I

ADMINISTRATION

2.(1) Administration.

The Minister shall administer this Act and may designate persons to act on the Minister's behalf.

2.(2) Appointment of Superintendent.

The Minister shall appoint a Superintendent of Securities and may appoint one or more deputy superintendents to carry out the purposes of this Act.

2.(3) Deputy Superintendent.

The Minister or the Superintendent may authorize a deputy superintendent to carry out or to exercise any duties or any powers that may be carried out or exercised by the Superintendent under this Act.

2.(4) Notice.

Notice of the appointment of the Superintendent and deputy superintendents, if any, shall be published in The Royal Gazette.

3.(1) Prohibition of Gifts.

No employee under the Civil Service Act performing duties or exercising powers under this Act shall solicit or accept directly or indirectly any grant or gratuity from a person or company registered under this Act or any affiliate of that person or company or from any director, officer, employee or agent of that person or company and no person or company registered under this Act or, director, officer, employee or agent of that person or company or any affiliate of that person or company shall offer, make or give directly or indirectly any such grant or gratuity.

3.(2) Conflict of Interest.

No employee under the Civil Service Act performing duties or exercising powers under this Act shall hold any shares of a person or company registered under section 12.

4. Extra Territorial Acts.

The Minister and the Superintendent may, for the purpose of the administration and enforcement of this Act and the regulations, act outside New Brunswick as if they were acting inside New Brunswick.

5.(1) Records.

All documents filed with the Superintendent and records required by this Act to be prepared and maintained by the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

5.(2) Electronic Records.

Where documents filed with the Superintendent or records prepared and maintained by the Superintendent are maintained other than in written form

(a) the Superintendent shall furnish any copies required to be furnished in intelligible written form, and

(b) a report reproduced from such documents or records, if it is certified as correct by the Superintendent, is, without proof of the office or signature of the Superintendent, admissible in evidence to the same extent as the original written documents or records would have been.

5.(3) Production of Documents.

The Superintendent is not required to produce any document or record where a copy of the document is furnished in compliance with paragraph (2)(a).

PART II

APPEALS

6.(1) Appeal.

Any person or company directly affected by a decision of the Superintendent, other than a decision under section 64, may appeal to the Court of Queen's Bench of New Brunswick within thirty days from the making of the decision, or within such further time as the Court may allow.

6.(2) Stay.

Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Superintendent or the Court of Queen's Bench of New Brunswick may grant a stay until disposition of the appeal.

6.(3) Certification of documents.

The Superintendent shall certify to the Registrar of the Court,

(a) his decision, together with any statement of reasons therefor;

(b) the record of the proceedings before him; and

(c) all written submissions made to him or other material that is relevant to the appeal.

6.(4) Minister entitled to appear.

The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

6.(5) Powers of Court on appeal.

Where an appeal is taken under this section, the Court may by its order direct the Superintendent to make such decision or to do such other act as the Superintendent is authorized and empowered to do under this Act or the regulations and as the Court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Superintendent shall make such decision or do such act accordingly.

6.(6) Further decisions.

Notwithstanding an order of the Court on an appeal, the Superintendent may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section.

PART III

INVESTIGATIONS

7.(1) Investigation order.

Where it appears probable to the Minister that any person or company has,

(a) contravened any of the provisions of this Act or the regulations; or

(b) committed an offence under the Criminal Code (Canada) in connection with a trade in securities,

the Minister may, by order, appoint any person to make such investigation as he considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

7.(2) Investigation order.

The Minister may, by order, appoint any person to make such investigation as he considers expedient for the due administration of this Act or into any matter relating to trading in securities, and in such order shall determine and prescribe the scope of the investigation.

7.(3) Scope of investigation.

For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(a) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of

money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

7.(4) Powers to summon witnesses and require production.

The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in The Court of Queen's Bench of New Brunswick for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of The Court of Queen's Bench of New Brunswick as if in breach of an order or judgment of that Court.

7.(5) Counsel.

A person giving evidence at an investigation under this section may be represented by counsel.

7.(6) Seizure of property.

Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person or company whose affairs are being investigated.

7.(7) Inspection of seized documents.

Where any documents, records, securities or other property are seized under subsection (6), the documents, records, securities or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.

7.(8) Accountants and experts.

Where an investigation is ordered under this section, the person making the investigation may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.

7.(9) Report of investigation.

Every person appointed under subsection (1), (2) or (8) shall provide the Minister with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation.

7.(10) Evidence not to be disclosed.

No person, without the consent of the person making the investigation, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under this section.

7.(11) Publication.

The Minister may cause any report made under this section to be published in whole or in part in such manner as he considers proper.

8.(1) Order to freeze property.

The Superintendent may,

(a) during or after an investigation in respect of a person or company under section 7;

(b) where he is about to make or has made an order under section 72 that trading in securities of an issuer shall cease;

(c) where he is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or

(d) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Superintendent are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company,

in writing direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause (a), (b), (c) or (d) to hold such funds or securities or direct the person or company referred to in clause (a), (b), (c) or (d) to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the Bankruptcy Act (Canada), the Judicature Act, the

Business Corporations Act, the Winding-up Act (Canada) or section 9 of this Act, or until the Superintendent in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

8.(2) Application for directions.

Any person or company named in a direction issued under subsection (1) may, if in doubt as to the application of the direction to particular funds or securities, apply to the Superintendent for an order of clarification.

8.(3) Revocation or amendment of direction.

Upon the application of a person or company directly affected by a direction issued under subsection (1), the Superintendent may make an order on such terms and conditions he may impose revoking the direction or consenting to the release of any fund or security.

8.(4) Freezing Mining and Property Rights.

In any of the circumstances mentioned in paragraph (1)(a), (b), (c) or (d), the Superintendent may, in writing, notify any Registrar of Deeds or the Minister of Natural Resources and Energy that proceedings are being or are about to be taken that may affect land or mining rights belonging to the person or company referred to in the notice, which notice shall be registered against the land or mining rights mentioned therein, and while such notice remains so registered no person shall acquire such land or mining rights, or any part thereof, or any estate, right, title or interest therein, except under the provisions of the Bankruptcy Act, chapter B-3 of the Revised Statutes of Canada, 1985, or the Winding-up Act; but the Superintendent may, in writing, revoke or modify the notice.

9.(1) Appointment of receiver, etc.

The Superintendent may,

(a) during or after an investigation in respect of a person or company under section 7;

(b) where he is about to make or has made an order under section 72 that trading in securities of an issuer shall cease;

(c) where he is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or

(d) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Superintendent are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company;

apply to a judge of The Court of Queen's Bench of New Brunswick for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

9.(2) Appointment.

Upon an application under subsection (1), the judge may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company, or, in a proper case, of the

security holders of or subscribers to the person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

9.(3) Ex parte application.

Upon an ex parte application made by the Superintendent under this section, the judge may make an order under subsection (2) appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days.

9.(4) Powers of receiver, etc.

A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

9.(5) Enforcement of order.

An order made under this section may be enforced in the same manner as any order or judgment of The Court of Queen's Bench of New Brunswick and may be varied or discharged upon an application made by notice.

9.(6) Rules of practice.

Upon an application made under this section, The Rules of Court apply.

PART IV

EXAMINATIONS

10.(1) Examinations by Superintendent.

Notwithstanding anything in section 11, the Superintendent may in writing appoint any person to examine at any time,

(a) the financial affairs of a registrant; and

(b) the books and records of a custodian of assets of a mutual fund or of a custodian of shares or units of a mutual fund under a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare such financial or other statements and reports that may be required by the Superintendent.

10.(2) Access to records.

The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being

examined, and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

10.(3) Fees.

The Superintendent may charge such fees as may be prescribed by the regulations for any examination made under this section.

11. Filing of financial statements of registrants.

Every registrant shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Superintendent annually and at such other time or times as the Superintendent may require a financial statement satisfactory to the Superintendent as to his financial position, certified by the registrant or an officer or partner of the registrant and reported upon by the auditor of the registrant, and shall deliver to the Superintendent such other information as the Superintendent may require in such form as he may prescribe.

PART IVa

STOCK EXCHANGES AND CLEARING AGENCIES

11a Stock exchanges.

No person or company shall carry on business as a stock exchange or clearing agency in New Brunswick without the approval in writing by the Superintendent.

PART V

REGISTRATION

12.(1) Registration for trading.

No person or company shall,

(a) trade in a security unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

(b) act as an underwriter unless the person or company is registered as an underwriter; or

(c) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Superintendent and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

12.(2) Termination of salesperson.

The termination of the employment of a salesperson with a registered dealer shall operate as a suspension of the registration of the salesperson until notice in writing has been received by the Superintendent from another registered dealer of the employment of the salesperson by the other registered dealer and the reinstatement of the registration has been approved by the Superintendent.

12.(3) Non-trading employee.

The Superintendent may designate as non-trading any employee or class of employees of a registered dealer that does not usually sell securities, but the designation may be cancelled as to any employee or class of employees where the Superintendent is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesperson.

13.(1) Granting of registration.

The Superintendent shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where in the

opinion of the Superintendent the applicant is suitable for registration and the proposed registration or amendment to registration is not objectionable.

13.(2) Terms and conditions.

The Superintendent may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities.

13.(3) Refusal.

The Superintendent shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard.

13a.(1) Suspension, cancellation, etc.

The Superintendent, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in his opinion such action is in the public interest.

13a.(2) Interim suspension.

Where the delay necessary for a hearing under subsection (1) would, in the opinion of the Superintendent, be prejudicial to the public interest, the Superintendent may suspend the registration without giving the registrant an opportunity to be heard, in which case he shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Superintendent within fifteen days of the date of the suspension.

13a.(3) Surrender.

Notwithstanding subsection (1), the Superintendent may, upon an application by a registrant, accept, subject to such terms and conditions as he may impose, the voluntary surrender of the registration of the registrant where he is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest.

13b. Subsequent applications.

A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed.

14. Application.

An application for registration shall be made in writing upon a form and accompanied by such fee as may be prescribed by the regulations.

15. Address for Service.

Every applicant shall state in the application an address for service in New Brunswick and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated.

16. Examination.

The Superintendent may require an applicant for a licence in any category to successfully complete one or more examinations that in his opinion is necessary for the protection of the public interest before a licence is issued.

17. Administration of Examination.

Any examination required may be administered by the Superintendent or his designate. Examination may be oral, written or both and may differ for each category of applicants.

18. Further information.

The Superintendent may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Superintendent.

19.(1) Residence.

The Superintendent may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration unless at the time of the application the individual is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesperson under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Superintendent, otherwise suitable for registration.

19.(2) Idem.

The Superintendent may refuse registration to a person or company if any director or officer of the person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration unless at the time of the application he is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesperson under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Superintendent, otherwise suitable for registration.

20.(1) Notice of changes.

Subject to the regulations, every registered dealer shall, within five business days of the event, notify the Superintendent in the form prescribed by the regulations of,

(a) any change in address for service in New Brunswick or any business address;

(b) any change in the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor;

(c) the commencement and termination of employment of every registered salesperson and, in the case of termination of employment, the reason therefor;

(d) the opening or closing of any branch office in New Brunswick and, in the case of the opening of any branch office in New Brunswick, the name and address of the person in charge thereof; and

(e) any change in the name or address of the person in charge of any branch office in New Brunswick.

20.(2) Idem.

Subject to the regulations, every registered adviser and underwriter shall, within five business days of the event, notify the Superintendent in the form prescribed by the regulations of,

(a) any change in address for service in New Brunswick or any business address; and

(b) any change in the directors or officers of the registered adviser or underwriter and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor.

(c) the opening or closing of any branch office in New Brunswick and, in the case of the opening of any branch office in New Brunswick, the name and address of the person in charge thereof; and

(d) any change in the name or address of the person in charge of any branch office in New Brunswick.

20.(3) Idem.

Every registered salesperson shall, within five business days of the event, notify the Superintendent in the form prescribed by the regulations of,

(a) any change in his address for service in New Brunswick or in his business address; and

(b) every commencement and termination of his employment by a registered dealer.

PART VI

EXEMPTIONS FOR REGISTRATION REQUIREMENTS

21.(1) Exemption of trades.

Subject to the regulations, registration is not required in respect of the following trades:

(a) a trade by a person who, having authority to sell property of other persons, is required to sell securities at or upon a judicial sale, a bankruptcy or a winding-up.

(b) a trade in a security exempted from the prospectus requirement by Part X;

(c) a trade from the holdings of any person, company or combination of persons or companies described in clause (c) in the definition of "distribution" in subsection 1 (1) for the purpose of giving collateral for a bona fide debt.

(d) a trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a bona fide debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt.

(e) a trade in a security that may occasionally be transacted by employees of a registered dealer where the employees do not usually sell securities and have been designated by the Superintendent as non-trading employees, either individually or as a class.

(f) a trade between a person or company and an underwriter acting as purchaser or between or among underwriters.

(g) a trade in a security by a person or company acting solely through an agent who is a registered dealer.

(h) the execution of an unsolicited order to purchase or sell through a registered dealer by a bank to which the Bank Act (Canada) applies or a trust company registered under the Loan and Trust Companies Act as agent for a person or company and the trade by such person or company in placing the unsolicited order with the bank or trust company.

(i) a trade where the party purchasing as principal is a company or person, other than an individual, and is recognized by the Superintendent as an exempt purchaser.

(j) a trade in respect of which the regulations provide that registration is not required.

21.(2) Exemption of securities.

Subject to the regulations, registration is not required to trade in the following securities:

(a) bonds, debentures or other evidences of indebtedness,

(i) of or guaranteed by the Government of Canada or any province of Canada or by the Government of the United Kingdom or any foreign country or any political division thereof;

(ii) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated;

(iii) of or guaranteed by a bank to which the Bank Act (Canada) applies, a trust company or loan corporation licensed under the Loan and Trust Companies Act or an insurance company licensed under the Insurance Act;

(iv) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the Bretton Woods Agreements Act (Canada), if the bonds, debentures, or evidences of indebtedness are payable in the currency of Canada or the United States of America; or

(v) of or guaranteed by the Asian Development Bank or the Inter-American Development Bank, if the bonds. debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America and if, with respect to such securities, such documents, certificates, reports, releases, statements, agreements or other information as may be required by the Superintendent are filed.

(b) certificates or receipts issued by a trust company registered under the Loan and Trust Companies Act for moneys received for guaranteed investment.

(c) securities issued by a private mutual fund.

(d) negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or

commercial paper traded to an individual has a denomination or principal amount of not less than $50,000.

(e) mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations,

(f) securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to an individual.

(g) securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such issuer enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.

(h) securities issued by corporations to which the Co-operative Associations Act applies that are issued as a condition of membership in the cooperative association for consideration from each individual member not exceeding an aggregate value of $100.

(i) membership shares of a credit union governed by the Credit Unions Act and of a federation governed by the Credit Union Federations Act.

(j) securities in respect of which the regulations provide that registration is not required.

21.(3) Trades by trust company.

For the purpose of subsection (1), a trust company registered under the Loan and Trust Companies Act shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it.

22. Exemptions of advisers.

Registration as an adviser is not required to be obtained by,

(a) a bank to which the Bank Act (Canada) applies, or the Federal Business Development Bank incorporated under the Federal Business Development Bank Act (Canada), or a trust company licensed under the Loan and Trust Companies Act, or an insurance company licensed under the Insurance Act;

(b) a lawyer, accountant, engineer or teacher;

(c) a registered dealer, or any partner, officer or employee thereof; and

(d) a publisher of or any writer for any bona fide newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice, and

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(e) such other persons or companies as are designated by the regulations.

PART VII

TRADING IN SECURITIES GENERALLY

24.(1) Confirmation of trade.

Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

(a) the quantity and description of the security;

(b) the consideration;

(c) whether or not the registered dealer is acting as principal or agent;

(d) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold;

(e) the date and the name of the stock exchange, if any, upon which the transaction took place;

(f) the commission, if any, charged in respect of the trade; and

(g) the name of the salesperson, if any, in the transaction.

24.(2) Idem.

Where a trade is made in a security of a mutual fund, the confirmation shall contain, in addition to the requirements of subsection (1),

(a) the price per share or unit at which the trade was effected; and

(b) the amount deducted by way of sales, service and other charges.

24.(3) Idem.

Subject to the regulations, where a trade is made in a security of a mutual fund under a contractual plan, the confirmation shall contain in addition to the requirements of subsections (1) and (2),

(a) in respect of an initial payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the initial payment and the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation thereof;

(b) in respect of each subsequent payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges, that is allocated to the payment which is the subject of the confirmation;

(c) in respect of an initial purchase made under a contractual plan which permits the deduction of sales, service and other charges from the first and subsequent instalments, a brief statement of the sales, service and other charges to be deducted from subsequent purchases;

(d) in respect of each purchase made under a contractual plan, a statement of the total number of shares or units of the mutual fund acquired and the amount of sales charges paid under the contractual plan up to the date the confirmation is sent or delivered.

24.(4) Coded identification.

For the purposes of clauses (1) (d) and (g), a person or company or a salesperson may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesperson will be furnished to the customer on request.

24.(5) Filing of code.

Where a person or company uses a code or symbols for identification in a confirmation under subsection (1), the person or company shall forthwith file with the Superintendent the code or symbols and their meaning, and shall notify the Superintendent within five days of any change in or addition to the code or symbols or their meaning.

24.(6) Disclosure by agent.

Every dealer who has acted as agent in connection with any trade in a security shall promptly disclose to the Superintendent, upon request by the Superintendent, the name of the person or company from or to or through whom the security was bought or sold.

25.(1) Order prohibiting calls to residences.

The Superintendent may by order suspend, cancel, restrict or impose terms and conditions upon the right of any person or company or class of persons or companies named or described in the order to,

(a) call at any residence; or

(b) telephone from within New Brunswick to any residence within or outside New Brunswick, for the purpose of trading in any security or in any class of securities.

25.(2) Hearing.

The Superintendent shall not make an order under subsection (1) without giving the person or company or class of persons or companies affected an opportunity to be heard.

25.(3) "residence" defined.

In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

25.(4) What constitutes calls.

For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesperson of the person or company calls or telephones on its behalf.

26.(1) Representations prohibited.

No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a

right of the owner to require redemption or purchase, shall make any representation, written or oral, that he or any person or company,

(a) will resell or repurchase; or

(b) will refund all or any of the purchase price of, such security.

26.(2) Future value.

No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

26.(3) Listing.

No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Superintendent, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange.

26.(4) Application of section.

This section does not apply to any representation referred to in subsection (1) made to a person or to a company where the representation is contained in an enforceable written agreement and the security has an aggregate acquisition cost of more than $50,000.

27.(1) Where dealer is principal.

Where a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in the trade as a principal, the registered dealer shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract.

27.(2) Effect of statement.

A statement made in compliance with this section or clause 24(1)(c) that a dealer proposes to act or has

acted as principal in connection with a trade in a security does not prevent such dealer from acting as agent in connection with a trade of such security.

27.(3) Application of section.

This section does not apply to trades referred to in subsection 21(1) or to securities referred to in subsection 21(2).

28. Disclosure of financial interest of advisers and dealers.

Subject to the regulations, every registered adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser were an issuer may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including,

(a) any ownership, beneficial or otherwise, that any of them may have in respect of such securities or in any securities issued by the same issuer;

(b) any option that any of them may have in respect of such securities, and the terms thereof;

(c) any commission or other remuneration that any of them has received or may expect to receive from any person or company in connection with any trade in such securities;

(d) any financial arrangement relating to such securities that any of them may have with any person or company; and

(e) any financial arrangement that any of them may have with any underwriter or other person or company who has any interest in the securities.

29. **Disclosure of underwriting liability.**

Every registered dealer that recommends a purchase, sale, exchange or hold of a security in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it and intended for general circulation shall, in type not less legible than that used in the body of the publication, state whether the registered dealer or any of its officers or directors has at any time during the past twelve months assumed an underwriting liability

with respect to such securities or for consideration provided financial advice to the issuer of such securities or whether the registered dealer or any of its officers or directors will receive any fees as a result of the recommended action.

30. Publication of names.

Every registered dealer shall publish the name of every person or company having an interest, either directly or indirectly, to the extent of not less than 5 per cent in the capital of the dealer, on all letterheads, circulars and stationery that contain any offer or solicitation respecting a trade in securities or in a preliminary prospectus or prospectus upon or in which the name of the registered dealer appears as underwriter but where the Superintendent determines that a registered dealer or a class of registered dealers is subject to conditions of registration or to regulations imposed by a self-regulatory organization that require provision to customers in the same or some other manner of other appropriate information, the Superintendent may, subject to such terms and conditions as the Superintendent may impose, exempt the registered dealer or class of registered dealers from the requirements of this section.

31. Use of name of another registrant.

No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant and the Superintendent.

32. Registration not to be advertised.

No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered.

33. Holding out by unregistered person.

No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered.

34. Advertising approval by Superintendent.

No person or company shall make any representation, written or oral, that the Superintendent has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any security or issuer.

35.(1) Margin contracts.

Where a person, or a partner or employee of a partnership, or a director, officer or employee of a company, after he or the partnership or company has contracted as a registered dealer with any customer to buy and carry upon margin any securities of any issuer either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same issuer for any account in which,

(a) he;

(b) his firm or a partner thereof; or

(c) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under his control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers, any such contract with a customer is, at the option of the customer, voidable and the customer may recover from the dealer all moneys paid with interest thereon or securities deposited in respect thereof.

35.(2) Exercise of option.

The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at his address for service in New Brunswick.

36. Declaration as to short position.

Any person or company who places an order for the sale of a security through an agent acting for him that is a registered dealer and who,

(a) at the time of placing the order, does not own the security; or

(b) if acting as agent, knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security.

37.(1) Shares in names of registrant not to be voted.

Subject to subsection (4), voting securities of an issuer registered in the name of,

(a) a registrant or in the name of his nominee; or

(b) a custodian or in the name of his nominee,

where such issuer is a mutual fund,

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

37.(2) Forwarding of information by registrant.

Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security so registered at the record date for notice of meeting a copy of any notice, financial statement, information circular or other material but the registrant or custodian is not required to send or deliver such material unless the issuer or the beneficial owner of such securities has agreed to pay the reasonable costs to be incurred by the registrant or custodian in so doing.

37.(3) Copies of information.

At the request of a registrant or custodian, the person or company sending material referred to in subsection

(2) shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material.

37.(4) Voting of shares.

A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

37.(5) Proxies.

A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection (1).

37.(6) "custodian" defined.

For the purpose of this section, "custodian" means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement.

38.(1) Submission of advertising.

The Superintendent may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver to the Superintendent at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities.

38.(2) Interpretation.

For the purposes of this section,

(a) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(b) "sales literature" includes records, videotapes and similar material, written matter and all other material, except preliminary prospectuses and prospectuses, designed for use in a presentation to a purchaser, whether such material is given or shown to him.

38.(3) Prohibition of advertising.

Where the Superintendent has issued an order pursuant to subsection (1), he may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

38.(4) Cancellation or variation of order.

Where an order has been made pursuant to subsection (1), the Superintendent, on application of the registered dealer at any time after the date thereof, may cancel or vary the order where in its opinion it is not contrary to the public interest to do so.

PART VIII

REGISTRATION OF SECURITIES

39. Registration requirement.

No person or company shall trade in a security unless the security is registered under this Act or the security or trade is exempt from registration under this Act.

40. Registration by Qualification.

A person or company may register a security by filing a preliminary prospectus and a prospectus and obtaining a receipt therefor from the Superintendent.

41.(1) Preliminary prospectus.

A preliminary prospectus shall substantially comply with the requirements of this Act and the regulations respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by the regulations need not be included.

41.(2) Idem.

A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices.

42. Receipt for preliminary prospectus.

The Superintendent shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof.

43.(1) Prospectus.

A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of this Act and the regulations.

43.(2) Supplemental material.

The prospectus shall contain or be accompanied by such financial statements, reports or other documents as are required by this Act or the regulations.

44.(1) Amendment to preliminary prospectus on material change.

Subject to subsection (2), where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with section 40 and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practicable and in any event within ten days after the change occurs.

44.(2) Idem.

Where an amendment to a prospectus is filed under subsection (1) for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus or an amendment to the prospectus such additional distribution shall not be proceeded with for a period of ten days after the amendment is filed or, in the event the Superintendent informs the party filing in writing within ten days of the filing that he objects to the further distribution until such time as a receipt for the amended prospectus is obtained from the Superintendent.

44.(3) Notice of amendment.

An amendment to a preliminary prospectus referred to in subsection (1) shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under subsection 52(3).

45.(1) Certificate by issuer.

Subject to subsection (2) of this section, a prospectus filed under section 40 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

> "The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part VIII of the Securities Act and the regulations thereunder."

45.(2) Idem.

Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer.

45.(3) Idem.

Where the Superintendent is satisfied upon evidence or submissions made to him that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Superintendent may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer.

45.(4) Idem.

With the consent of the Superintendent, a promoter need not sign the certificate in a prospectus.

45.(5) Certificate of promoter.

The Superintendent may, in his discretion, require any person or company who was a promoter of the issuer within the two preceding years to sign the certificate required by subsection (1) subject to such conditions as the Superintendent may consider proper.

45.(6) Idem.

With the consent of the Superintendent, a promoter may sign a certificate in a prospectus by his agent duly authorized in writing.

46.(1) Certificate of underwriter.

Where there is an underwriter, a prospectus filed under section 40 shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus:

"To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to

the securities offered by this prospectus as required by Part VIII of the Securities Act and the regulations thereunder."

46.(2) Idem.

With the consent of the Superintendent, an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing.

47. Statement of rights.

Every prospectus filed under section 40 shall contain a statement of the rights given to a purchaser by sections 56 and 75.

48.(1) Registration by Coordination.

Securities for which a preliminary prospectus and a prospectus or similar document have been filed and receipts therefor obtained from any prescribed authority charged with the administration of any Act of any province of Canada relating to the sale of securities or fraud prevention or with the Secretary of

State for Canada or with any prescribed state or Federal regulatory body in the United States of America relating to the sale of securities may be registered by filing a copy of the preliminary prospectus and prospectus or registration statement filed with the prescribed authority that was necessary to register the security with that authority, and obtaining a receipt therefor.

48.(2) Other Information.

Notwithstanding subsection (1), the Superintendent may request any other information or copies of any other document that have been filed with the other authority.

49.(1) Issuance of receipt.

Subject to subsection (2), the Superintendent shall issue a receipt for a prospectus filed under this Part unless it appears to him that it is not in the public interest to do so.

49.(2) Refusal of receipt.

The Superintendent shall not issue a receipt for a prospectus if it appears to him that,

(a) the prospectus or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) contains a misrepresentation;

(b) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(c) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(d) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;

(e) the past conduct of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(f) such escrow or pooling agreement as the Superintendent considers necessary or advisable with respect to securities has not been entered into;

(g) such agreement as the Superintendent considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;

(h) in the case of a prospectus filed by a finance company, as defined in the regulations,

(i) the plan of distribution of the securities offered is not acceptable,

(ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations, or

(iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations; or

(i) a person or company who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus is not acceptable to him.

49.(3) Hearing.

The Superintendent shall not refuse to issue a receipt under subsection (1) or (2) without giving the person or company who filed the prospectus an opportunity to be heard.

50.(1) Refiling of prospectus.

No distribution of a security to which sections 40 or 48 apply shall continue longer than twelve months from the later of either,

(a) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or

(b) the date of the last prospectus filed under this section,

as the case may be, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Superintendent.

50.(2) Idem.

A distribution may be continued for a further twelve months if,

(a) a pro forma prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus;

(b) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and

(c) a receipt for the prospectus is obtained from the Superintendent within the twenty days following the lapse date of the previous prospectus.

50.(3) Idem.

The continued distribution of securities after the lapse date does not contravene subsection (1) unless and until any of the conditions of subsection (2) are not complied with.

50.(4) Failure to refile.

All trades completed in reliance upon subsection (2) after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser's first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection (2) are not complied with.

50.(5) Extension of time.

The Superintendent may, upon an application of an issuer, extend, subject to such terms and conditions as he may impose, the times provided by subsection (2) where in his opinion it would not be prejudicial to the public interest to do so.

51.(1) Orders to furnish information re distribution.

Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with this Part or the regulations, the Superintendent may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and

material as the Superintendent considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as he considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Part and the regulations.

51.(2) Idem.

Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with this Part or the regulations, the Superintendent may, upon being satisfied that all reasonable efforts have been made to comply with this Part and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part or the regulations as he considers advisable, upon such terms and subject to such conditions as he considers proper.

PART IX

DISTRIBUTION - GENERALLY

52.(1) Use of preliminary prospectus.

From the time a receipt for a preliminary prospectus is obtained, and until a receipt for the prospectus is obtained, it is permissible, notwithstanding section 39,

(a) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

(b) to distribute a preliminary prospectus; and

(c) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him.

52.(2) Copy.

Any dealer distributing a security during the period referred to in subsection (1) shall send a copy of the preliminary prospectus to every person who requests one.

52.(3) Record.

The dealer shall keep a record of the names and addresses of the persons to whom he sends the preliminary prospectus.

52.(4) Defective preliminary prospectus.

Where it appears to the Superintendent that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may, without giving notice, order that the trading permitted by subsection (1) in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Superintendent is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under subsection (3).

53. Material given on distribution.

From the date of the issuance by the Superintendent of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause 52(1)(a), but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations.

54.(1) Order to cease trading.

Where it appears to the Superintendent, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in subsection 49(2) exist, the Superintendent may order that the distribution of the securities under the prospectus shall cease.

54.(2) Hearing.

No order shall be made under subsection (1) without a hearing unless in the opinion of the Superintendent the length of time required for a hearing could be

prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Superintendent may extend the order until the hearing is concluded.

54.(3) Notice.

A notice of every order made under this section shall be served upon the issuer to whose securities the prospectus relates, and forthwith upon the receipt of the notice,

(a) distribution of the securities under prospectus by the person or company named in the order shall cease; and

(b) any receipt issued by the Superintendent for the prospectus is revoked.

55.(1) Sending of prospectus.

A dealer who receives an order or subscription for security offered in a distribution made in accordance with this Act shall, unless he has previously done so, send to the purchaser a copy of the prospectus and any amendment thereto, not later than the second working day after receipt of the order or subscription.

55.(2) Exception.

Subsection (1) does not apply to a dealer acting solely as agent for his client and who receives no remuneration, even indirectly, from the issuer or the vendor.

56.(1) Cancellation.

A person who subscribes for or purchases from a dealer securities offered in a distribution may unilaterally cancel the subscription or the contract by notifying the dealer within two working days after receipt of the prospectus or any amendment thereto.

56.(2) Exception.

Subsection (1) does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection (1), otherwise than to secure indebtedness, before the expiration of the time referred to in subsection (1).

57. Presumption.

The addressee is presumed to have received, in the ordinary course of mail, the copy of the prospectus or the notice of cancellation mailed to him.

PART X

EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

58.(1) Exemption Due to the Nature of the Purchasers.

Subject to the regulations registration is not required where the distribution of securities is to a sophisticated purchaser to the extent that he purchases the securities as principal.

58.(2) Definition of Sophisticated Purchaser.

Each of the following persons is a sophisticated purchaser:

(a) bank to which the Bank Act (Canada) applies or the Federal Business Development Bank incorporated under the Federal Business Development Bank Act (Canada),

(b) a company licensed under the Loan and Trust Companies Act,

(c) an insurance company licensed under the Insurance Act,

(d) Her Majesty in right of Canada or any province or territory of Canada,

(e) any municipal corporation or public board or commission in Canada,

(f) a company all of the voting securities of which belong to Her Majesty in Right of Canada or any province or territory of Canada,

(g) a dealer or adviser registered under this Act,

(h) a federation within the meaning of the Credit Union Federations Act,

(i) a person purchasing a security which has an aggregate acquisition cost to such purchaser of not less than $150,000, or such larger amount that is prescribed by regulation,

(j) a subsidiary of a company mentioned in clause (a), (b), (c), or (f), or

(k) any other person designated in an order of the Superintendent on such terms as he may determine.

58.(3) Portfolio Managers.

A company licensed under the Loan and Trust Companies Act, an insurance company licenced under the Insurance Act or a dealer or adviser registered under this Act is also a sophisticated purchaser when purchasing or subscribing for securities for the portfolio of a third person managed solely by that company, dealer or adviser.

58.(4) Notice to the Superintendent

A person who makes a distribution of securities under section 58(2)(i) shall, within ten days thereafter, file a notice with the Superintendent accompanied with the information prescribed by regulation.

58.(5) Consent of Superintendent

The exemption provided for in section 58(2)(i) applies only where the Superintendent agrees thereto or does not raise any objection within 15 days of receiving the information required by regulation.

58.(6) Offering Memorandum

In the case of the exemption provided for in section 58(2)(i), the issuer must prepare an offering memorandum in the form prescribed by regulation and send it to the persons contemplated by the distribution, before accepting any undertaking on their part.

59. Deleted.

60.(1) Limited Number of Shareholders.

Registration is not required for the distribution of securities where the number of holders of securities after the distribution is completed is not greater than ten, provided the distribution is made without advertisement.

60.(2) Undivided Joint Owners.

Each undivided joint owner of one security is counted as one security holder.

61.(1) Exemption Due to the Nature of the Transaction.

Registration is not required in the following cases:

(a) the distribution to holders of its securities of an exchange, conversion or subscription right relating to its securities, as well as of the securities issued on the exercise of that right;

(b) the distribution of securities by an issuer to holders of its securities as a stock dividend, as a dividend in specie, or through a dividend reinvestment plan;

(c) the distribution of securities whether of its issue or not that is distributed by it to holders of its securities as incidental to a bona fide

reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued;

(d) the distribution of securities of its own issue to its employees and senior executives or those of an affiliate who are not induced to purchase by expectation of employment or continued employment;

(e) the trade is an isolated trade by or on behalf of an issuer in a specific security of its own issue, for the issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;

(f) the exchange of securities in connection with a merger or statutory amalgamation;

(g) when a takeover bid by way of an exchange of securities is accompanied with a takeover bid circular delivered pursuant to section 66; or

(h) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in paragraph (c) of the definition of "distribution" in subsection 1(1) for the purpose of giving collateral for a bona fide debt.

62.(1) Exemptions Due to the Nature of the Securities.

Registration is not required for the distribution of securities:

(a) referred to in subsection 21(2), excepting paragraph (k) thereof;

(b) that are listed and posted for trading on any prescribed stock exchange where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange, provided that a statement of material facts is filed with and is accepted for filing by the stock exchange;

(c) that are options to sell or purchase securities known as puts and calls or any combination thereof which provide that the holder thereof may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, provided,

(i) the option has been written by a member of a prescribed exchange or the performance under the option is guaranteed by a member of a prescribed exchange,

(ii) the securities that are the subject of the option are listed and posted for trading on a prescribed exchange, and

(iii) the option is in the form from time to time prescribed by the regulations; or

(d) that are exempted by the regulations.

62.(2) Application of ss. 55, 56, 57 and 75.

Sections 55, 56, 57 and 75 apply with necessary modifications to a distribution under clause (1) (b) as if sections 39 and 50 were applicable thereto, and the statement of material facts referred to in clause (1) (b) shall be deemed conclusively to be a prospectus for the purposes of sections 55, 56, 57 and 75.

63. Subsequent Distribution of a Security Purchased Under an Exemption.

Registration is not required for a subsequent trade in a security purchased under an exemption provided in this Part where

(a) the initial purchaser and subsequent purchasers entitled to one of the exemptions provided in this Part have held the security for at least six months from the date of the initial exempt trade,

(b)

(i) the securities are listed and posted for trading on a prescribed stock exchange, or

(ii) the securities are "gilt-edged securities" as determined by regulation, and

(c) no unusual effort is made to prepare the market or to create a demand for such securities and no extra ordinary commission or consideration is paid in respect of such trade.

64.(1) Exemption Order from Prospectus Requirements.

The Superintendent may, upon the application of an interested person or company, rule that any trade, intended trade, security, person or company is not subject to section 12 or 39 where he is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary.

64.(2) Determination of whether distribution has ceased.

Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Superintendent may determine the question and rule accordingly.

64.(3) Ruling final.

A decision of the Superintendent under this section is final and there is no appeal therefrom.

PART XI

PROXY SOLICITATION

65.(1) Mandatory Solicitation.

Where an issuer incorporated in New Brunswick is subject to proxy solicitation rules in a prescribed jurisdiction, that issuer shall comply with the requirements of the prescribed jurisdiction in soliciting proxies from the holders of its voting securities in New Brunswick or holders of its voting securities whose latest address as shown on the books of the issuer is in New Brunswick.

65.(2) Multiple Prescribed Jurisdictions.

Where the issuer incorporated in New Brunswick is subject to proxy solicitation rules in more than one prescribed jurisdiction, that issuer may, with the consent of the Superintendent, by means of an undertaking, designate the prescribed jurisdiction with which it shall comply in soliciting proxies from the holders of its voting securities in New Brunswick or holders of its voting securities whose latest address as shown on the books of the issuer is in New Brunswick.

65.(3) Failure to Designate Jurisdiction.

Where an issuer fails to designate by means of an undertaking the prescribed jurisdiction with which it shall comply in soliciting proxies from the holders of its voting securities in New Brunswick or holders of its voting securities whose latest address as shown on the books of the issuer is in New Brunswick, those holders shall have all the rights with respect to proxy solicitation of any person in any prescribed jurisdiction to which the issuer is subject.

65.(4) Where Proxy Rules to Apply in New Brunswick.

No issuer subject to proxy solicitation rules of a prescribed jurisdiction shall solicit proxies from the holders of its voting securities in New Brunswick or holders of its voting securities whose latest address as shown on the books of the issuer is in New Brunswick unless the issuer complies with the proxy solicitation rules of the prescribed jurisdiction.

PART XII

TAKEOVER BID AND ISSUER BIDS.

66.(1) Designation of Takeover Bid Rules.

Where a person or company pursuant to a takeover bid or issuer bid as defined in the Securities Act or similar legislation of a prescribed jurisdiction offers to acquire securities from any person or company who is in New Brunswick or from any security holder whose last address as shown on the books of the offeree issuer is in New Brunswick, and a similar offer is made to a person or company in a prescribed jurisdiction, the takeover bid or issuer bid, shall be subject to the same terms and conditions in New Brunswick as in the prescribed jurisdiction and all material relating to the takeover bid or issuer bid, that is sent by the offerer to holders in the prescribed jurisdiction of securities of the class shall be sent to security holders who are in New Brunswick or to any security holder of the offerer issuer whose last address as shown on the books of the offeree issuer is in New Brunswick.

66.(2) Multiple Prescribed Jurisdictions.

Where pursuant to subsection (1) a takeover bid or issuer bid, is subject to the Securities Act or similiar legislation in more than one jurisdiction, the offerer, subject to the consent of the Superintendent, may designate the laws of the other jurisdiction to be govern by undertaking to extend the rights of residents of that jurisdiction to residents of New Brunswick.

66.(3) Where Failure to Designate Jurisdiction.

Where the offerer fails to designate a prescribed jurisdiction under subsection (2) any person or company who is in New Brunswick or whose last address as shown on the books of the offeree issuer is in New Brunswick shall have all the rights of any person in any other jurisdiction where a similar takeover bid or issuer bid is made as if the laws of that jurisdiction were enacted and formed part of the laws of New Brunswick and applicable hereto, mutatis mutandis.

PART XIII

ENFORCEMENT

67.(1) Offences, general.

Every person or company who,

(a) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Superintendent or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(c) contravenes this Act or the regulations; or

(d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than $1,000,000 or to imprisonment for a term of not more than two years, or to both.

67.(2) Defence.

No person or company is guilty of an offence under clause (1) (a) or (b) if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

67.(3) Directors and officers.

Where a company or a person other than an individual is guilty of an offence under subsection (1), every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on conviction is liable to a fine of not more than $1,000,000 or to imprisonment for a term of not more than two years, or to both.

68. Consent of Minister.

No proceedings under section 67 shall be instituted except with the consent or under the direction of the Minister.

69. Information containing more than one offence.

An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

70.(1) Execution of warrant issued in another province.

Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of New Brunswick within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who

issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all peace officers and constables within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in New Brunswick and to rearrest such person anywhere in New Brunswick.

70.(2) Prisoner in transit.

Any peace officer or constable of New Brunswick or of any other province or territory of Canada who is passing through New Brunswick having in his custody a person arrested in another province or territory under a warrant endorsed under subsection (1) is entitled to hold, take and rearrest the accused anywhere in New Brunswick under such warrant without proof of the warrant or the endorsement thereof.

71.(1) Order for compliance.

Where it appears to the Superintendent that any person or company has failed to comply with or is violating any decision or any provision of this Act or the

regulations, the Superintendent may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the Court of Queen's Bench, for an order,

(a) directing the person or company to comply with the decision or provision or restraining the person or company from violating the decision or provision; and

(b) directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease violating the decision or provision,

and upon the application the judge may make such order, or such other order as he thinks fit.

71.(2) Appeal.

An appeal lies to the Court of Appeal from an order made under subsection (1).

72.(1) Order to cease trading.

The Superintendent may, where in his opinion such action is in the public interest, order, subject to such terms and conditions as he may impose, that trading shall cease in respect of any securities for such period as is specified in the order.

72.(2) Temporary order.

No order shall be made under subsection (1) without a hearing unless in the opinion of the Superintendent the length of time required for a hearing could be prejudicial to the public interest, in which event the Superintendent may make a temporary order, which shall not be for longer than fifteen days from the date of the making thereof, but the order may be extended for such period as the Superintendent considers necessary where satisfactory information is not provided to the Superintendent within the fifteen day period.

73.(1) Superintendent's discretion to remove exemptions.

The Superintendent may, where in his opinion such action is in the public interest, order, subject to such terms and conditions as he may impose, that any or all of the exemptions contained in this Act do not apply to the person or company named in the order.

73.(2) Temporary order and hearing.

No order shall be made under subsection (1) without a hearing unless in the opinion of the Superintendent the length of time required for a hearing could be

prejudicial to the public interest, in which event a temporary order may be made which shall not be for longer than fifteen days from the date of the making thereof unless the hearing is commenced in which case the Superintendent may extend the order until the hearing is concluded.

73.(3) Notice.

Notice of a temporary order made under subsection (2) shall be given forthwith together with the notice of the hearing under subsection (2) to every person or company who in the opinion of the Superintendent is directly affected thereby.

74.(1) Limitation period.

No proceedings under this Part shall be commenced in a Court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Superintendent.

74.(2) Idem.

No proceedings under this Act shall be commenced before the Superintendent more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent.

PART XIV

CIVIL LIABILITY

75.(1) Liability for misrepresentation in prospectus.

Where a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages against,

(a) the issuer or a selling security holder on whose behalf the distribution is made;

(b) each underwriter of the securities who is required to sign the certificate required by section 46;

(c) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;

(d) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(e) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses (a) to (d),

or, where the purchaser purchased the security from a person or company referred to in clause (a) or (b) or from another underwriter of the securities, he may elect to exercise a right of cancellation against such person, company or underwriter, in which case he shall have no right of action for damages against such person, company or underwriter.

75.(2) Defence.

No person or company is liable under subsection (1) if he proves that the purchaser purchased the securities with knowledge of the misrepresentation.

75.(3) Idem.

No person or company, other than the issuer or selling security holder, is liable under subsection (1) if he proves,

(a) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he forthwith gave reasonable general notice that it was so filed;

(b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;

(c) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his report, opinion or statement, or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Superintendent and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the prospectus or the amendment to the prospectus; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he had reasonable grounds to believe and did believe that the statement was true.

75.(4) Idem.

No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

75.(5) Idem.

No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

75.(6) Limitation re underwriters.

No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by him.

75.(7) Limitation in action for damages.

In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

75.(8) Joint and several liability.

All or any one or more of the persons or companies specified in subsection (1) are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the Court may deny the right to recover such contribution where, in all the

circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

75.(9) Limitation re amount recoverable.

In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public.

75.(10) No derogation of rights.

The right of action for cancellation or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

76.(1) Liability for misrepresentation in circular.

Where a take-over bid circular sent to the security holders of an offeree issuer as required by Part XII or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and may elect to exercise a right of action for cancellation or damages against the offeror or a right of action for damages against,

(a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;

(b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations of a prescribed jurisdiction but only with respect to reports, opinions or statements that have been made by the person or company; and

(c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a).

76.(2) Idem.

Where a director's circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Part XII or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.

76.(3) Idem.

Subsection (1) applies with necessary modifications where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation.

76.(4) Defence.

No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.

76.(5) Idem.

No person or company, other than the offeror, is liable under subsection (1), (2) or (3) if he proves,

(a) that the take-over bid circular, issuer bid circular, directors' circular or directors' or officer's circular, as the case may be, was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable general notice that it was so sent;

(b) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular or directors' or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or directors' or officer's circular, he withdrew his consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;

(c) that, with respect to any part of the circular purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or

statement as an expert, but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his report, opinion or statement as an expert, or

(ii) on becoming aware that such part of the circular did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Superintendent and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the circular; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document and he had reasonable grounds to believe and did believe that the statement was true.

76.(6) Idem.

No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

76.(7) Idem.

No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

76.(8) Joint and several liability.

All or any one or more of the persons or companies specified in subsection (1), (2) or (3) are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the Court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

76.(9) Limitation of damages.

In an action for damages pursuant to subsection (1), (2) or (3) based on a misrepresentation affecting a security offered by the offeror company in exchange for securities of the offeree company, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation.

76.(10) Deemed take-over bid circular or issuer bid circular.

Where the offeror in a take-over bid or issuer bid is required, by the by-laws, regulations or policies of a prescribed stock exchange through the facilities of which the take-over bid or issuer bid is made, to file with it or to deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, delivered to the security holders as required by Part XII.

76.(11) No derogation of rights.

The right of action for cancellation or damages conferred by this section is in addition to and without derogation from any other right the security holders of the offeree issuer may have at law.

77. Standard of reasonableness.

In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of sections 75 and 76, the standard of reasonableness shall be that required of a prudent man in the circumstances of the particular case.

78. Liability of dealer or offerer.

A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with section 55 or a security holder to whom a take-over bid and take-over bid circular or an issuer bid and an issuer bid circular, or any notice of change or variation to any such bid or circular, were required to be delivered but were not delivered in compliance with this Act has a right of action for cancellation or damages against the dealer or offeror who failed to comply with the applicable requirement.

79.(1) Liability where material fact or change undisclosed.

Every person or company in a special relationship with an issuer who purchases or sells securities of the issuer with knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade unless,

(a) the person or company in the special relationship with the issuer proves that the person or company reasonably believed that the material fact or material change had been generally disclosed; or

(b) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be.

79.(2) Liability for tipping.

Every,

(a) issuer;

(b) person or company in a special relationship with an issuer; and

(c) person or company that proposes,

(i) to make a take-over bid, in accordance with Part XII, for the securities of an issuer,

(ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with an issuer, or

(iii) to acquire a substantial portion of the property of an issuer,

and who informs another person or company of a material fact or material change with respect to the issuer that has not been generally disclosed is liable to compensate for damages any person or company that thereafter sells securities of the issuer to or purchases securities of the issuer from the person or company that received the information unless,

(d) the person or company who informed the other person or company proves that the informing person or company reasonably believed the material fact or material change had been generally disclosed;

(e) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be;

(f) in the case of an action against an issuer or a person in a special relationship with the issuer, the information was given in the necessary course of business; or

(g) in the case of an action against a person or company described in subclause (c) (i), (ii) or (iii), the information was given in the necessary course of business to effect the take-over bid, business combination or acquisition.

79.(3) Idem.

Any person or company who has access to information concerning the investment program of a mutual fund in New Brunswick or the investment portfolio managed for a client by a portfolio manager or by a registered dealer acting as a portfolio manager and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or

the investment portfolio managed for the client by the portfolio manager or registered dealer include securities of that issuer is accountable to the mutual fund or the client of the portfolio manager or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale.

79.(4) **Accountability for gain.**

Every person or company who is an insider, affiliate or associate of an issuer that,

(a) sells or purchases the securities of the issuer with knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed; or

(b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed,

is accountable to the issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, as the case may be, unless the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

79.(5) Liability, joint and several.

Where more than one person or company in a special relationship with an issuer is liable under subsection (1) or (2) as to the same transaction or series of transactions, their liability is joint and several.

79.(6) Measure of damages.

In assessing damages under subsection (1) or (2), the Court shall consider,

(a) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change; or

(b) if the plaintiff is a vendor, the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the price that he received for the security,

but the Court may instead consider such other measures of damages as may be relevant in the circumstances.

79.(7) Definition.

For the purposes of this section, "person or company in a special relationship with an "issuer" means,

(a) a person or company that is an insider, affiliate or associate of,

(i) the issuer,

(ii) a person or company that is proposing to make a take-over bid, in accordance with Part XII, for the securities of the issuer, or

(iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the issuer or to acquire a substantial portion of its property;

(b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the issuer or with or on behalf of a person or company described in subclause (a)(ii) or (iii);

(c) a person who is a director, officer or employee of the issuer or of a person or company described in subclause (a)(ii) or (iii) or clause (b);

(d) a person or company that learned of the material fact or material change with respect to the issuer while the person or company was a person or company described in clause (a), (b) or (c);

(e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

79.(8) Idem.

For the purposes of subsections (1) and (2), a security of the issuer shall be deemed to include,

(a) a put, call, option or other right or obligation to purchase or sell securities of the issuer; or

(b) a security, the market price of which varies materially with the market price of the securities of the issuer.

80.(1) Action by Superintendent on behalf of issuer.

Upon application by the Superintendent or by any person or company who was at the time of a transaction referred to in subsection 79(1) or (2) or is at the time of the application a security holder of the issuer, a judge of the Court of Queen's Bench may, if satisfied that,

(a) the Superintendent or the person or company has reasonable grounds for believing that the issuer has a cause of action under subsection 79(4); and

(b) either,

(i) the issuer has refused or failed to commence an action under section 79 within sixty days after receipt of a written request from the Superintendent or such person or company so to do, or

(ii) the issuer has failed to prosecute diligently an action commenced by it under section 79,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Superintendent or authorizing such person or company or the Superintendent to commence or continue an action in the name of and on behalf of the issuer to enforce the liability created by subsection 79(4).

80.(2) Action by Superintendent on behalf of mutual fund.

Upon the application by the Superintendent or any person or company who was at the time of a transaction referred to in subsection 79(3) or is at the time of the application a security holder of the mutual fund, a judge of the Court of Queen's Bench may, if satisfied that,

(a) the Superintendent or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under subsection 79(3); and

(b) the mutual fund has either,

(i) refused or failed to commence an action under subsection 79(3) within sixty days after receipt of a written request from the Superintendent or the person or company so to do, or

(ii) failed to prosecute diligently an action commenced by it under subsection 79(3),

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Superintendent or authorizing the person or company or the Superintendent to commence and prosecute or to

continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection 79(3).

80.(3) Costs.

Where an action under subsection 79(3) or (4) is,

(a) commenced;

(b) commenced and prosecuted; or

(c) continued,

by a board of directors of an issuer, the trial judge or a judge of the Court of Queen's Bench may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the issuer, if he is satisfied that the action was prima facie in the best interests of the issuer and the security holders thereof.

80.(4) Action by Superintendent on behalf of security holder of the issuer.

Where an action under subsection 79(3) or (4) is,

(a) commenced;

(b) commenced and prosecuted; or

(c) continued, by a person or company who is a security holder of the issuer,

the trial judge or a judge of the Court of Queen's Bench may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the issuer, if he is satisfied that,

(d) the issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and

(e) the continuance of the action is prima facie in the best interests of the issuer and the security holders thereof.

80.(5) **Idem.**

Where an action under subsection 79(3) or (4) is,

(a) commenced;

(b) commenced and prosecuted; or

(c) continued, by the Superintendent,

the trial judge or a judge of the Court of Queen's Bench shall order the issuer to pay all costs properly incurred by the Superintendent in commencing, commencing and prosecuting or continuing the action, as the case may be.

80.(6) Idem.

In determining whether an action or its continuance is prima facie in the best interests of an issuer and the security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the issuer and the security holders thereof and the cost involved in the prosecution of the action.

80.(7) Notice of application.

Notice of every application under subsection (1) or (2) shall be given to the Superintendent, the issuer or the mutual fund, as the case may be, and each of them may appear and be heard thereon.

80.(8) Order to co-operate.

Every order made under subsection (1) or (2) requiring or authorizing the Superintendent to commence and prosecute or continue an action shall provide that the issuer or mutual fund, as the case may be, shall co-operate fully with the Superintendent in the commencement and prosecution or continuation of the action, and shall make available to the Superintendent

all books, records, documents and other material or information known to the issuer or mutual fund or reasonably ascertainable by the issuer or mutual fund relevant to such action.

80.(9) Appeal.

An appeal lies to the Court of Appeal from any order made under this section.

81.(1) Cancellation of contract.

If subsection 27(1) applies to a contract and such subsection is not complied with, a person or company who has entered into the contract is entitled to cancellation thereof by mailing or delivering written notice of cancellation to the registered dealer within sixty days of the date of the delivery of the security to or by the person or company, as the case may be, but, in the case of a purchase by the person or company, only if he is still the owner of the security purchased.

81.(2) Idem.

If clause 24(1)(c) applies to a contract and a registered dealer has failed to comply with such subsection by not disclosing that he acted as principal, a person or company who has entered into the contract is entitled to cancellation thereof by mailing or delivering written notice of cancellation to the registered dealer within seven days of the date of the delivery of the written confirmation of the contract.

81.(3) Service.

For the purpose of subsection (2), a confirmation sent by prepaid mail shall be deemed conclusively to have been delivered to the person or company to whom it was addressed in the ordinary course of mail.

81.(4) Onus.

In an action respecting a cancellation to which this section applies, the onus of proving compliance with section 24 or 27 is upon the registered dealer.

81.(5) Limitation period.

No action respecting a cancellation shall be commenced under this section after the expiration of a period of ninety days from the date of the mailing or delivering the notice under subsection (1) or (2).

82.(1) Cancellation of purchase of mutual fund security.

Every purchaser of a security of a mutual fund in New Brunswick may, where the amount of the purchase does not exceed the sum of $50,000, cancel the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a contractual plan but, subject to subsection (5), the amount the purchaser is entitled to recover on exercise of this right to cancel shall not exceed the net asset value of the securities purchased, at the time the right is exercised.

82.(2) Idem.

The right to cancel a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection (1) for cancelling a purchase made under a contractual plan.

82.(3) Notice.

The notice mentioned in subsection (1) shall be in writing, and may be given by prepaid mail, telegram or other means.

82.(4) Service.

A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

82.(5) Reimbursement.

Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of cancellation in accordance with this section for the amount of sales charges and fees relevant to

the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of exercise of the right of cancellation was given.

83. Limitation periods.

Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than,

(a) in the case of an action for cancellation, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any action, other than an action for cancellation, the earlier of,

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

PART XV

GENERAL PROVISIONS

84. Admissibility in evidence of certified statements.

A statement as to,

(a) the registration or non-registration of any person or company;

(b) the filing or non-filing of any document or material required or permitted to be filed;

(c) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or

(d) the date the facts upon which any proceedings are to be based first came to the knowledge of the Superintendent,

purporting to be certified by the Superintendent is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

85.(1) Filing and inspection of material.

Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Superintendent and all material so filed shall, subject to subsection (2), be made available by the Superintendent for public inspection during the normal business hours of the Superintendent.

85.(2) Idem.

Notwithstanding subsection (1), the Superintendent may hold material or any class of material required to be filed by this Act in confidence so long as the Superintendent is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Superintendent be available to the public for inspection.

86. Immunity of Superintendent and others.

No action or other proceeding for damages shall be instituted against any person for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

87. Regulations.

The Lieutenant Governor in Council may make regulations,

(a) prescribing categories for persons and companies and the manner of allocating persons and companies to categories, including permitting the Superintendent to make such allocations, and prescribing the form and content of and governing the use of prospectuses, preliminary prospectuses, pro forma prospectuses, and summary statements to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;

(b) designating mutual funds or a class or classes thereof as private mutual funds;

(c) designating banking transactions for the purposes of subparagraph (d) of the definition of "underwriter" in subsection 1 (1);

(d) prescribing the form and content of financial statements and interim financial statements required to be filed under this Act;

(e) prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

(f) classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category but no registrant shall be included in a category designated as,

i. investment dealer, unless he is a member of the Atlantic District of the Investment Dealers' Association of Canada,

ii. broker, unless he is a member of a prescribed stock exchange,

(g) regulating the trading of securities and records relating thereto;

(h) governing the furnishing of information to the public or to the Superintendent by a registrant in connection with securities or trades therein;

(i) governing the furnishing of information by a registrant or class of registrants to a person or company recognized by the Superintendent and governing the payment of fees with respect thereto;

(j) regulating the trading of securities other than on a prescribed stock exchange;

(k) governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;

(l) respecting fees payable by an issuer to a management company as consideration for investment advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

(m) respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and commissions to be paid to salespersons of shares or units of a mutual fund;

(n) designating any person or company or any class of persons or companies who shall not be required to obtain registration as an adviser;

(o) prescribing the fees payable to the Superintendent including fees for filing, fees upon applications for registration, fees in respect of audits, examinations and investigations made by the Superintendent and other fees in connection with the administration of this Act and the regulations;

(p) prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;

(q) prescribing the practice and procedure of investigations under section 7;

(r) prescribing the forms for use under this Act and the regulations;

(s) prescribing terms and conditions upon which a person or company may be designated as a recognized clearing agency;

(t) prescribing trades or securities, in addition to the trades and securities referred to in section 21, in respect of which registration shall not be required;

(u) prescribing trades or securities, referred to in section 21, in respect of which there shall cease to be exemption from registration;

(v) prescribing trades or securities, in addition to the trades and securities referred to in sections 58, 60, 61 and 62, in respect of which section 39 does not apply;

(w) prescribing trades or securities in respect of which sections 39 and 50 shall be applicable notwithstanding sections 58, 60, 61, and 62;

(x) exempting any seller or class of sellers from the requirements of subclauses 63 (1) (b) (i) and (ii);

(y) prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash;

(z) prescribing the practice and procedure by which the Superintendent recognizes exempt purchasers under paragraph (k) of subsection 21 (1);

(aa) exempting any category of registered advisers from the provisions of section 28 or varying the provisions of section 28, as they apply to any category of registered advisers;

(bb) prescribing the information required or permitted to be distributed under subsection 52 (1);

(cc) respecting the matters referred to in clause 49 (2) (h), and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder;

(dd) respecting any matter necessary or advisable to carry out effectively the intent and purpose of section 79, including, without restricting the generality of the foregoing, exempting any class or classes of persons and companies, trades or securities from liability under section 79 and prescribing standards for determining when a material fact or material change has been generally disclosed;

(ee) respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;

(ff) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Parts XI and XII, including, without restricting the generality of the foregoing, providing for exemptions in addition to those set out in subsections 92 (1) and (3), providing for exemptions from Part XI or XII and prescribing the form and content of any circular, report or other document required to be delivered or filed;

(gg) prescribing a penalty for the early redemption of shares or units of a mutual fund;

(hh) permitting the Superintendent to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company;

(ii) prescribing other authorities, jurisdictions and stock exchanges for any purpose under this Act;

(jj) prescribe the content, information, and forms of the notice and offering memorandum required under section 58.

88. Superintendent's direction to revoke or vary his decision.

The Superintendent may, where in his opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as he may impose revoking or varying any decisions made by him under this Act or the regulations.

89. Continuation of registration.

Every order and every registration made and receipt for a prospectus issued under The Securities Act, being chapter S-6 of the Revised Statutes of New Brunswick, 1973 and in effect immediately before the coming into force of this Act, continues in the same manner as if made or issued under this Act.